

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

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Apr. 22, 2005

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U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte NICHOLAS J. DeCRISTOFARO, DUNG A. NGO,
RICHARD L. BYE, JR., PETER J. STAMATIS and GORDON E. FISH

Appeal No. 2005-0454
Application 09/506,533

HEARD: MARCH 9, 2005

Before OWENS, KRATZ and TIMM, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from a rejection of claims 1-36.

THE INVENTION

The appellants claim an amorphous metal stator for a radial flux motor, and claim a brushless radial flux DC motor which

includes the stator. Claim 1, which claims the stator, is illustrative:

1. An amorphous metal stator for a radial flux motor having a rotor, said stator comprising a plurality of segments, each segment comprising a plurality of layers of amorphous metal strips, wherein each of said strips has a top and a bottom surface and is oriented such that (i) a line normal to either of said surfaces at substantially any point thereon is substantially perpendicular to the axis of rotation of said rotor, and (ii) when traversing said segment, said flux crosses one air gap.

THE REJECTION

Claims 1-36 stand rejected under 35 U.S.C. § 112, first paragraph, written description requirement.¹

OPINION

We reverse the aforementioned rejection.

The examiner argues that the line normal to the teeth section 230 in the appellants' figure 4a is not substantially perpendicular to the rotor's axis of rotation because the normal line and the rotor's axis of rotation do not intersect and form a 90° angle (answer, pages 5-6). Thus, the examiner argues, "the specification does not contain a full, clear, concise, and exact

¹ Rejections over prior art are withdrawn in the examiner's answer (pages 6-7).

written description of a line normal to the top and bottom surfaces of the teeth at any point on the surfaces being substantially perpendicular to the axis of rotation of the rotor, as recited by the claims 1, 22, 26, 35, 36, 37, 41, and 47" (answer, page 5).

The language "a line normal to either of said surfaces at substantially any point thereon is substantially perpendicular to the axis of rotation of said rotor" appears in each of the appellants' original independent claims 1, 22, 26, 35, 36 and 47.² Those original claims provide a written description of the subject matter therein. As stated in *Union Oil Co. of California v. Atlantic Richfield Co.* 208 F.3d 989, 998 n.4, 54 USPQ2d 1227, 1233 n.4 (Fed. Cir. 2000), "[o]ne of this court's predecessor courts clarified that disclosure in an originally filed claim satisfies the written description requirement. See *In re Gardner*, 480 F.2d 879, 880, 178 USPQ 149 (CCPA 1973) ('Under

² The other original independent claims, i.e., claims 37 and 41, recite that "a line normal to either of said top and bottom surfaces of either of said back-iron section and said tooth section at substantially any point thereon is substantially perpendicular to the axis of rotation of said rotor".

these circumstances, we consider the original claim in itself adequate "written description" of the claimed invention. It was equally a "written description" ... whether located among the original claims or in the descriptive part of the specification.'".

Accordingly, we reverse the examiner's rejection.³

³ The examiner may be of the view that the appellants are not claiming the subject matter which they consider to be their invention. In that regard we note that the appellants can be their own lexicographer with respect to the term "substantially perpendicular" and, in doing so, use the term in a way that differs from the mathematical definition of "perpendicular" set forth by the examiner (answer, page 5). See *Hormone Research Foundation Inc. v. Genentech Inc.*, 904 F.2d 1558, 1563, 15 USPQ2d 1039, 1043 (Fed. Cir. 1990) ("It is a well-established axiom in patent law that a patentee is free to be his or her own lexicographer [citation omitted], and thus may use terms in a manner contrary to or inconsistent with one or more of their ordinary meanings. For this reason, an analysis of the specification and prosecution history is important to proper claim construction.").

DECISION

The rejection of claims 1-36 under 35 U.S.C. § 112, first paragraph, written description requirement, is reversed.

REVERSED

<i>Terry J. Owens</i>)
TERRY J. OWENS)
Administrative Patent Judge)
<i>Peter F. Kratz</i>)
PETER F. KRATZ)
Administrative Patent Judge) BOARD OF PATENT
<i>Catherine Timm</i>)
CATHERINE TIMM) APPEALS AND
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